IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.MC.No. 538 of 2003()

ST.396/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, CHITTUR

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PETITIONER: ACCUSED 1 & 2:

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1. M.D.JOS, MANAGING DIRECTOR,
   EDDY CURRENT CONTROLS (INDIA) LTD.,
   EDDYPURAM, CHALAKKUDY, TRICHUR DISTRICT.

2. MRS.REETHA JOS, DIRECTOR,
   EDDY CURRENT CONTROLS (INDIA) LTD.,
   EDDYPURAM, CHALAKKUDY, TRICHUR DISTRICT.

BY ADV. SRI.P.BENJAMIN PAUL
SRI.SAJI VARGHESE KAKKATTUMATTATHIL

RESPONDENTS: COMPLAINANT AND STATE:

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1. B.G.VINOD, S/O.SRI.GOPINATHAN NAIR,
   AGED 29 YEARS, RESIDING AT BINDU NIVAS,
   AGRAHARA, NALLEPPALLY VILLAGE, CHITTOOR TALUK,
   PALAGHAT.

2. STATE OF KERALA,
   REPRESENTED BY DIRECTOR GENERAL OF PROSECUTION,
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.A.SREERAMAKRISHNAN
SRI.G.HARIHARAN
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.538 of 2003

Dated this the 12th day of March 2007

O R D E R

The petitioners are accused 1 and 2 in a prosecution under Section 138 of the Negotiable Instruments Act. According to the petitioners, the second petitioner had not received the notice of demand. They are prepared to tender the amount due under the cheque to the complainant that is the first respondent herein. It is, in these circumstances, prayed that the proceedings may be quashed invoking the powers under Section 482 Cr.P.C. The mere fact that the accused are prepared to pay the amount after initiation of prosecution is certainly no ground which can help the accused to claim absolution from liability or quashing of proceedings. The grievance of the second petitioner that he had not received the notice of demand is again not one that can be considered by this court invoking the powers under Section 482 Cr.P.C.

2. It is submitted at the Bar that the parties have settled their disputes. Though time was indulgently granted to file a joint application for composition, none has been filed so far. I

am satisfied that it is not necessary to wait any longer.

In the result, this Crl.M.C.is dismissed. If the parties have settled their disputes, it shall be open to the complainant to report before the learned Magistrate that the complainant wants to withdraw from the prosecution. Appropriate orders under Section 257 Cr.P.C has to be passed by the learned Magistrate without waiting for personal presence of the complainant or the accused persons. If the complainant's grievance is redressed and the complainant through counsel makes an application for withdrawal, the learned Magistrate (if the learned Magistrate is satisfied about the acceptability of the prayer made by the counsel) must permit withdrawal of the case. If the parties want to report composition, such composition can also be accepted by the learned Magistrate. It is unnecessary to insist on personal appearance of the accused persons to facilitate such composition also.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

CRL.M.C.No.538 of 2003

ORDER

12th Day of March 2007